IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.568 OF 1998

Genba Govinda Khedkar
since deceased by his heirs
and legal representatives
Smt. Thakubai wd/o Genba Khedkar
and Ors. .. Appellants

Versu

Suresh Vishwanath Deshmukh and Ors. Respondents

Mrs.Vasanti Dighe for appellants
Mr.R.S.Apte for respondents

CORAM : P.V.KAKADE,J.
DATE : 24TH NOVEMBER, 2004

P.C.:

1. The appellant has filed this appeal against the

judgment and order passed by Addl.. District Judge, Pune dated 12th August, 1998 dismissing his appeal and confirming the judgment and order passed by the Trial Court whereby the suit was dismissed with costs.

2. I heard the learned counsel for the appellant. Perused the record and part of the compilation.

. The plaintiff filed the suit against the defendant for declaration and permanent injunction. Plaintiff came with the case that land Gat No.620 was formed from survey No.129, 130/1 and 131. According to him, the suit property was exclusively owned and possessed by him and the defendants had no concerned with said property. Survey No.130/1 is the ancestral property of the plaintiff and this property possessed by him. The partition took place between the father of the plaintiff and uncle Dhondiba Rambhaji Khedkar for his ancestral properties and the suit land was allotted to the share of the plaintiff’s father. Plaintiff’s father died in the year 1950 and plaintiff succeeded him in this property being his legal heirs. Dhondiba got their name for survey No.130/1 with collusion with the Revenue

Authorities and started obstructing Plaintiff's possession therein. Hence the suit for declaration of title and perpetual injunction came to be filed.

. The defendant challenged the suit, inter alia, submitting that the suit property Survey No.130/1 is now part of Gat No.620. The area of Gat No.130/1 was 12 acre 27 Gunthas and said property was possessed by the defendant's father who had purchased the said land by Registered sale deed dated 14.8.1967. The land of Survey No.130/1 was possessed since the date of the sale deed and at the time of consolidation Survey No.130/1 was included in gat No.620 and the name of the plaintiff's father was shown as owner for both these lands, therefore, the defendant moved the application to the concerned authority and accordingly name of the defendant was recorded as owner and possessor for Gat No.620 including the erstwhile Survey No.130/1 and therefore, the plaintiff's suit was sought to be dismissed with costs.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the very basis of the contention of the plaintiff was allegation of

partition of the suit property because according to the plaintiff the suit property came to his father by virtue of partition during the time of his ancestors. The learned trial judge further held that the defendant no.1 had proved that he is absolute owner of Gat No.130/1 and as such the suit came to be dismissed with costs. The appeal preferred against the said order was adjudicated on merits and the appeal court judge conferred with the findings of the trial court and dismissed the appeal. Hence the second appeal.

3. At the outset it may be noted that very foundation of the Plaintiff’s claim is alleged partition which took place during the time of ancestors, by which virtue the land of Gat No.130/1 was allowed to their name and plaintiff has inherited that property. However, it is crystal clear from the record that factum of partition was absolutely not proved. On the other hand, the evidence of the defendant no.1 is sufficient to show that he is absolute owner of the land Survey No.130/1 which is fortified by the document of registered sale deed of the said land followed by his application for mutation entry and subsequent consolidation proceeding.

. In other words, there is absolutely no substantial question of law involved in this appeal. It is now well settled law that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. In the present case before us it is very much clear that the evidence on record is sufficiently and properly appreciated by both the courts below and they have drawn the conclusions, which are just, legal and proper and therefore would brook no interference.

. In the result, the appeal stands dismissed in limine. Consequently the Civil Application also stands dismissed with no order as to costs.

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